COUNTY NOTICES OF PROPOSED RULEMAKING
Pursuant to A.R.S. §§ 49-112(A) or 49-112(B)

MARICOPA COUNTY
ENVIRONMENTAL SERVICES DEPARTMENT - AIR QUALITY DIVISION

1. **Heading and number of the proposed rule, ordinance, or other regulation:**
   Rule 100, Section 502 (Excess Emissions)
   New Rule 202 (Permit Requirements for Earthmoving Operations)
   New Rule 203 (Controlled Open Burning)

2. **Summary of the proposed rules, ordinances or other regulation:**
   Maricopa County is proposing to revise Rule 100, Section 502 (Excess Emissions) to add provisions separating start-up, shutdown, and bypass for scheduled maintenance from upset and malfunctions. These new provisions are proposed to require identification of numeric emission limits, when possible, and the identification of work practice standards, where limits are impractical. Maricopa County proposes to add new Rules 202 (Permit Requirements for Earthmoving Operations) and 203 (Controlled Open Burning). New Rule 202 will provide an orderly procedure for the review and issuance of permits for new earthmoving operations and for review of permits for existing earthmoving operations. New Rule 203 is proposed to explain the requirements for getting a Controlled Open Burning Permit, which is proposed to be issued to limit the emissions of air contaminants produced from combustion of any type of material outdoors, where the products of combustion are not directed through a flue. New Rule 203 is proposed to complement existing Rule 314 (Open Outdoor Fires).

3. **Name and address of the person to whom persons may address questions or comments:**

Name:	Johanna Kuspert, Air Quality Planner
Address:	Maricopa County Environmental Services Department Air Quality Division 1001 North Central Avenue, #201 Phoenix, Arizona 85004
Telephone:	(602) 506-6710
Fax:	(602) 506-6179

4. **Where persons may obtain a full copy of the proposed rule, ordinance, or other regulation:**

Location:	Maricopa County Environmental Services Department
Address:	Air Quality Division 1001 North Central Avenue, #201 Phoenix, Arizona 85004
Telephone:	(602) 506-6010
Fax:	(602) 506-6179

NOTICE OF PUBLIC INFORMATION
MARICOPA COUNTY
ENVIRONMENTAL SERVICES DEPARTMENT - AIR QUALITY DIVISION

1. **Heading and number of the proposed rules, ordinance, or other regulations that are the subject of the public workshop:**
   Rule 100, Section 502 (Excess Emissions)
   New Rule 202 (Permit Requirements for Earthmoving Operations)
   New Rule 203 (Controlled Open Burning)

2. **Date, time, and location of public workshop scheduled:**

Dates:	Thursday, May 21, 1998
Time:	11 a.m.
Location:	Maricopa County Environmental Services Department 1001 North Central Avenue, 5th Floor Conference Room Phoenix, Arizona

   Nature of Public Workshop: To discuss and approve the rules listed in question #1.

3. **County personnel to whom questions and comments may be addressed:**

Name:	Johanna Kuspert, Air Quality Planner
Address:	Maricopa County Environmental Services Department Air Quality Division 1001 North Central Avenue #201 Phoenix, Arizona 85004
Telephone:	(602) 506-6710
Fax:	(602) 506-6179

4. **Any other pertinent information concerning the above described rules, ordinance, or other regulations:**
   Please refer to the County Notice of Proposed Rules in this issue of the *Arizona Administrative Register*.

COUNTY NOTICES OF PROPOSED RULEMAKING
Pursuant to A.R.S. §§ 49-112(A) or 49-112(B)

PINAL COUNTY AIR QUALITY CONTROL DISTRICT

1. **Summary of the proposed rules and rule changes, any of which may be adopted in whole or in part:**

   A. Adoption-by-reference of revisions and additions to the 40 CFR 60 "NSPS" standards promulgated under Clean Air Act ("CAA") § 111, 40 CFR 61 "NESHAP" standards promulgated under CAA § 112, and 40 CFR 63 "MACT" standards promulgated under CAA § 112. The NSPS changes affect Code § 6-1-030; the NESHAP changes affect Code § 7-1-030.A; and the MACT changes affect Code § 7-1-030.B. All of the proposed changes mirror ADEQ's corresponding rule revisions; see 52 A.A.R. 3600, December 26, 1997, for an explanation of the substance of the affected provisions.

   B. Adoption-by-reference of revisions and additions to the "Acid Rain" standards found in 40 CFR Parts 74, 75, and 76, all mirroring prior or parallel ADEQ action. The "Acid Rain" changes will affect Code § 3-6-565. See A.A.C. R18-2-333 (Supp. 97-4) for the existing ADEQ rule, and 52 A.A.R. 3600, December 26, 1997, for a brief explanation of the substance of ADEQ's additional changes to that rule.

   C. Adoption of a CAA "§ 112.g program"; Code § 3-1-040 will be amended to reflect ADEQ's addition of A.A.C. R18-2-302.D; and Code § 3-2-195 will be amended to reflect ADEQ's corresponding revision to A.A.C. R18-2-320(B). See 52 A.A.R. 3600, December 26, 1997, for additional background regarding both the "§ 112.g program" and ADEQ's corresponding rule revisions.

   D. Revision of certain rules that constitute elements of the County's "Title V" permit program, which was approved on an interim basis by the EPA; see 61 FR 55910, October 30, 1996. Affected rules include:

   i. § 1-3-140.79.b.i; the EPA opined that Pinal County's existing definition of "major source" did not adequately address the requirement that sources consider fugitive emissions of hazardous air pollutants in determining whether total emissions from the source exceed the single-pollutant 10 tpy "major source" threshold.

Pinal proposes to amend the definition to reflect ADEQ's response to the EPA's comment regarding A.A.C. R18-2-101(61)(b)(i). See 52 A.A.R. 3600, December 26, 1997.

ii. § 1-3-140.79.c; literally, Pinal County's existing rule conflicts with the definition of "major source" set forth in 40 CFR § 70.2. However, the existing Pinal County rule reflects prevailing EPA guidance as to how a Title V program should be implemented, specifically as to how fugitive emissions should be treated in determining whether or not a source constitutes a "major source" within the contemplation of CAA § 302(j). The EPA's guidance, and Pinal County's rule, effectively relieve certain sources of "fugitive emissions" from a requirement to apply for and obtain a Title V permit.

Long-overdue revisions to 40 CFR 70 were to have amended Part 70 to conform to the EPA's guidance. Unfortunately, the EPA has still not reconciled its regulations with its guidance.

Therefore, Pinal County will change the existing rule to reflect the literal requirement of Part 70 that fugitive emissions be universally included in determining whether a source regulated under CAA §§ 111 or 112 constitutes a "major source."

The proposed action will conform Pinal's rules to the version of ADEQ's parallel definition, A.A.C. 18-2-101(61)(c)(xxvii) (93-4), which was given final interim approval by the EPA as an element of ADEQ's Title V permit program.

In proposing this rule revision, Pinal County recognizes that this action will add 1 more to the host of anomalies that exist in the maze of statutes and regulations pertaining to air quality regulation. Accordingly, unless and until the EPA renounces its policy pertaining to the treatment of fugitive emissions for sources regulated under CAA §§ 111 and 112, Pinal County plans to exercise "enforcement discretion" and administer even a newly revised rule with exactly the exemptions as are allowed under the current rule. That is, Pinal County does not intend to actually require a Title V permit application from any source that qualifies as a "major source" under CAA § 302(j) solely because of the rule change described here. Hopefully, the EPA will soon reconcile its regulations and guidance, and allow Pinal County to rescind this change and thereupon return to administering this rule in the manner that it is written.

iii. § 3-1-040.C.1; the existing rule provision exempts motor vehicles, agricultural vehicles, and certain fuel-burning equipment from regulation. The EPA has objected to the rule, indicating that these categorical exemptions may allow sources to escape a Title V permit obligation.

Initially, A.R.S. § 49-402(A) reserves unto ADEQ permitting authority over mobile and portable equipment. Accordingly, Pinal County currently lacks permitting jurisdiction over either motor vehicles or agricultural vehicles.

In addition, as a practical matter, sources exempted under the fuel-burning provision of the rule are physically incapable of traversing any of the "major source" thresholds defined under the Clean Air Act or its implementing regulations. Conceivably, the EPA Administrator could impose regulations on such sources under CAA §§ 111 or 112, and concomitantly extend a Title V permit requirement for such sources. In turn, the existing language of § 3-1-040.C.1 would then seemingly allow such fuel-burning sources to escape the EPA's mandate to obtain a Title V permit. As a practical matter, it seems inconceivable that the EPA will ever expressly impose a Title V permit requirement on fuel-burning equipment that has an aggregate firing rate of less than 500,000 Btu/hr. Accordingly, this "exemption" seems to present no meaningful prospect of allowing any source to ever escape a Title V permit requirement.

Nonetheless, Pinal County proposes to delete Code § 3-1-040.C.1, which will conform the local rule to the provisions of ADEQ's parallel rule, A.A.C. R18-2-302(C) (97-1).

Incidentally, Pinal notes that the EPA has not objected to the statutory provision upon which Pinal County's Title V program is founded, namely A.R.S. § 49-480.A (1992), which in defining the scope of the County's permitting authority, expressly invokes the jurisdictional exemptions that apply to ADEQ under A.R.S. § 49-426.B (1992). The latter statute defines precisely the same permitting exemptions as those defined under Code § 3-1-040.C.1.

iv. Code § 3-1-045.F.1; the EPA requested imposition of a requirement that all "Title V" sources submit a corresponding application with 12 months of the EPA's final interim approval of Pinal's Title V program.

However, subsequent developments have rendered this issue moot.

The 12-month period in question has already run. Every operating source in the County that might conceivably fall subject to a Title V permit obligation has either already submitted a complete application or has received a "synthetic minor" permit obviating any obligation to apply for a Title V permit. Accordingly, this no longer constitutes a meaningful issue and Pinal proposes to take no action.

v. Codes § 3-1-050.C.; the EPA requested that Pinal's rules be amended to impose an explicit 12-month application deadline for sources that change operations under an existing permit in manner that newly subjects the source to a Title V permit requirement.

In response to the EPA's parallel comment to ADEQ regarding that agency's Title V program, ADEQ initially pointed out that no deadline was necessary, because a source making such a change would either require a wholly new permit, issued prior to the change, or a significant permit revision, which would also need to be approved prior to the change. In turn, the EPA requested certain clarifications as to the requirements for a revision-application seeking such a change. Accordingly, ADEQ has now modified R18-2-320(E) dealing with the requirements for significant permit revisions, as well as R18-2-304(E) dealing with permit application requirements, to effectively require that for a source seeking to revise a non-Title V permit into a Title V permit, both the revision application and the review of that application must conform to the requirements for a new Title V application. See 52 A.A.R. 3600, December 26, 1997.

Aside from the fact that a Title V permit created by the "significant revision" path will have a shorter life than the 5-year term afforded a new Title V permit, it is not altogether clear what functional difference exists between the alternative pathways to upgrading from non-Title-V to Title-V status.

In any case, given the mandate of A.R.S. § 49-480.B to administer the local Title V program in substantially identical manner to ADEQ's practice, Pinal County now proposes to embrace the same argument regarding the lack of need for an express 12-month application requirement, and to additionally make revisions to Code § 3-1-055.B.1, paralleling the revisions to A.A.C. R18-2-304(E), and to Code § 3-1-195, paralleling the new addition of a A.A.C. R18-2-320(E), with the objective of assuring that when a source seeks to revise a non-Title V permit into a Title V permit, both the revision application and the review of that application will conform to the requirements for a new Title V application.

vi. Code § 3-1-081.A.10; Pinal proposes to clarify the rule to meet the EPA's interim approval comments by mirroring ADEQ's revision to A.A.C. R18-2-306(A)(10). See 52 A.A.R. 3600, December 26, 1997.

vii. Code § 3-1-081.A.14; Pinal proposes to meet the EPA's interim approval comments, and clarify that emission changes authorized by a permit-defined trading scheme must not exceed emissions allowed under the permit, and may not constitute "modifications under any provision of Title I of the [Clean Air] Act," mirroring ADEQ's revision to A.A.C. R18-2-306(A)(14). See 52 AAR 3600, December 26, 1997.

viii. Code § 3-4-420; in response to the EPA's interim approval comment objecting to the possibility that a Class B source could use a conditional order to avoid a Title V permit requirement, Pinal proposes to amend Code § 3-4-420.A. to expressly preclude such an event.

Since the EPA interpreted ADEQ's conditional order rule as already precluding use of a conditional order to shield a source from a Title V permit requirement, this change merely conforms Pinal County's permit program to ADEQ's program.

ix. Code § 3-5-490.C; the EPA has opined the need for revision to the language that allows a source whose permit has expired to operate to operate under authority of an application for a general permit. Specifically, the EPA seeks clarification that a source seeking operating authority under a general permit remains bound to the obligations under its prior individual permit, even if that permit expires.

Initially, Pinal asserts that the change is unnecessary, because the clear and unequivocal requirement of Code § 3-1-089.C already expressly obligates such a source to "adhere and conform to the terms of the expired permit, subject only to such permit revisions as may be allowed under this Code. A failure to adhere and conform to the terms of the expired permit, or such revisions as may be allowed under this Code, shall constitute a violation." Code § 3-1-089.C does not exempt a general permit applicant from that ongoing obligation, obviating any need for further revisions to Code § 3-5-490.C.

Alternatively, should the EPA remain unswayed by the irrefutable logic of Pinal's interpretation of its own rules, Pinal proposes to amend Code § 3-5-490.C to explicitly extend the prior-permit obligations to a source operating under authority of a general permit application.

x. Code §§ 3-5-490.C; the EPA has objected to Pinal's definition of the procedural mechanics of bridging the individual-permit-to-general-permit chasm, at least where they concern treatment of a source whose coverage under the general permit is denied. Specifically, the rule allows such a source a period of 180 days after the denial in which to apply for an individual permit, and during that period, the rule expressly confers operating authority seemingly under auspices of the application itself. The EPA has required that any such continuation of authority of operating authority must be founded on an individual permit application timely filed prior to the expiration of the original individual permit, which will in turn invoke the provisions of the individual permit as continuing constraints on the source.

Pinal proposes to amend the rule to address the EPA's concern.

Apparently, A.A.C. R18-2-503(C) (Supp. 97-1) addresses this requirement by necessary implication.

xi. Code §§ 3-5-550.C; the EPA has required that if Pinal revokes the authority for a Title-V-class source to operate under a general permit, and the source is allowed the option of continuing to operate under authority of an individual permit application, then the rule must be amended to obligate the source to continue to comply with the limitations of the general permit.

Pinal proposes to amend the rule to address the EPA's concern.

Apparently, A.A.C. R18-2-510(D) (Supp. 97-1) addresses this requirement by necessary implication.

2. **A demonstration of the grounds and evidence of compliance with A.R.S. § 49-112 (A) or (B):**

Based on information and belief, the Director of the Pinal County Air Quality Control District affirms the following:

A. Initially, the total of the fees and other charges currently assessed in connection with the administration of the County's air quality program do not now equal the cost of program administration. To the extent that both the County and ADEQ impose parallel fees, the County's fees are capped by rule at ADEQ's rates, which implicitly affirms that the County's fees are reasonable.

B. Based on a review of the operating costs of the Pinal County Air Quality Control District, and any reasonable projection of total of revenues resulting from the fees and other charges that would be assessed under any or all of the rule revisions proposed above, the Control Officer finds that there is no real risk that revenues will exceed the cost of program administration. The continuing fee-cap, defined by ADEQ's fee rates, continues to implicitly assure the reasonableness of the County's fees. Thus, implementation of any or all of the rule changes proposed above will still not violate the fee limitations of either A.R.S. §§ 49-112(A)(3) or 49-112(B).

C. To the extent the changes outlined above constitute rule changes, all consist of revisions to conform existing County rules to ADEQ's parallel rules. As such, all of those changes inherently avoid triggering the A.R.S. § 49-112(A) requirement for a demonstration as a precedent to adoption of more stringent or functionally additional rules.

3. **Name and address of the person to whom persons may address questions or comments:**

Name:	Donald P. Gabrielson, Director
Address:	Pinal County Air Quality Control District P.O. Box 987 Florence, Arizona 85232
Telephone:	(520) 868-6760
Fax:	(520) 868-6754

4. **Where persons may obtain a full copy of the proposed rule or existing rules:**

Name:	Pinal County Air Quality Control District
Address:	P.O. Box 987 Florence, Arizona 85232 574 South Central Florence, Arizona
Telephone:	(520) 868-6760
Fax:	(520) 868-6754

Note - the District has the proposed revisions, as well as supporting materials, available in hard-copy or on disk.

5. **Date, time, and location of scheduled public workshops and hearings:**

Public Hearing

Date:	May 27, 1998
Time:	2 p.m.
Location:	Board of Supervisor's Hearing Room Administration Building No. 1. 31 North Pinal Avenue Florence, Arizona

Nature of meeting: Public hearing as an element of the regular meeting of the Pinal County Board of Supervisors, to consider formal adoption of some, all, or none of the proposed revisions.